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Forty-seventh session
Agenda item 143
THE SITUATION IN BOSNIA
AND HERZEGOVINA

SECURITY COUNCIL
Forty-eighth year

Letter dated 25 March 1993 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the Secretary-General

I have the honour to present to you the attached statement dated 25 March 1993, by His Excellency Mr. Alija Izetbegović, President of the Presidency of the Republic of Bosnia and Herzegovina, on behalf of the delegation representing the Government of the Republic of Bosnia and Herzegovina to the International Conference on the Former Yugoslavia (see annex).

May I ask for your kind assistance in circulating the present letter and the attached statement as a document of the General Assembly, under agenda item 143, and of the Security Council.

(Signed) Muhamed SACIRBEY
Ambassador and Permanent Representative

ANNEX

Statement issued in New York on 25 March 1993 by the President of the Presidency of Bosnia and Herzegovina

By signing the Vance-Owen Peace Plan for the Republic Bosnia and Herzegovina (the nine principles, the military agreement, the maps of the proposed provinces and the document on the interim period) the State delegation of the Republic of Bosnia and Herzegovina states the following:

1. Regardless of the fact whether or not all parties will sign the documents today, the Delegation of Bosnia and Herzegovina considers that the International Community was and will remain obligated to protect the independence and the territorial integrity of Bosnia and Herzegovina as an attacked country, in accordance with the Charter of the United Nations, International Law, decisions of the London Conference, and especially according to all relevant resolutions of the United Nations Security Council concerning the aggression against Bosnia and Herzegovina.

2. Our signatures on the proposed documents will become invalid and will be considered null and void if the following conditions are not met:

a) all interested parties, especially the aggressor side does not sign the documents without any alterations or reservations within a reasonable time frame.

b) the International Community does not undertake, within a timely fashion the effective measures of implementation of the signed agreement, to the degree and in the manner which the situation will impose.

c) if the aggression continues.

3. Any provisions of the signed documents cannot be interpreted and not be understood as the diminishing integrity and sovereignty of the Republic of Bosnia and Herzegovina as an independent and undivided whole state.

On the contrary, the signed agreement must be understood and can only be interpreted as the means and way to protect and strengthen that integrity.

4. It is understood that individuals declared as war criminals, or for whom there is a grounded suspicion that they were instigators or organizers or executors of war crimes on the territory of Bosnia and Herzegovina, will not and cannot be nominated for the highest positions of authority of the State, both in the Interim Presidency and Interim Government.

5. The Delegation of the Government of the Republic of Bosnia and Herzegovina asks the international community and the UN Security Council to continue with the intention of successfully completing the establishment of the Court for War Crimes committed on the territory of Bosnia and Herzegovina and the former Yugoslavia.

6. Upon the signing of today's documents, the Delegation of Bosnia and Herzegovina expresses that the aggression and its consequences be stopped and reversed with peaceful means, but at the same time the Delegation will not surrender its legitimate right to self defense in accordance with Article 51 of the UN Charter.

In this regard, if the peace efforts remain without results, the Presidency and the Government will undertake all necessary measures to defend its people, and in that case, expect the Security Council without further delay to lift the arms embargo on Bosnia and Herzegovina.

7. The Delegation of Bosnia and Herzegovina expresses its appreciation to the United States of America and to its special envoy to these talks Ambassador Reginald Bartholomew, for the constructive contributions in overcoming the difficulties which arose during the course of these talks.

8. We are issuing this statement concurrent with the signing of today's documents and are handing it over to the International Conference on the Former Yugoslavia with the request that it be included and attached with the official documents of the Conference.

Delegation for the Government
of the Republic of Bosnia and
Herzegovina

Alija Izetbegovic
President of the Presidency
of the Republic of Bosnia and
Herzegovina

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PROGRAMME BUDGET FOR THE BIENNIUM 1992-1993

TRAINING AND RESEARCH: UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

Programme budget implications of draft resolution II recommended by the Second Committee (A/47/729, para. 21)

Report of the Fifth Committee

Rapporteur: Mr. Jorge OSELLA (Argentina)

1. At its 58th meeting, on 25 March 1993, the Fifth Committee, pursuant to rule 153 of the rules of procedure of the General Assembly, considered the statement by the Secretary-General (A/C.5/47/82) on the programme budget implications of draft resolution II entitled "United Nations Institute for Training and Research" recommended by the Second Committee in paragraph 21 of its report (A/47/729). The related report of the Advisory Committee on Administrative and Budgetary Questions was also before the Committee (A/47/7/Add.14).

2. Statements and comments made in the course of the Committee's consideration of the item are reflected in the relevant summary record (A/C.5/47/SR.58).

DECISION OF THE FIFTH COMMITTEE

3. The Fifth Committee decided, without a vote, to inform the General Assembly that, should it adopted draft resolution II recommended by the Second Committee in paragraph 21 of its report (A/47/729):

(a) It would need to authorize the Secretary-General to enter into a commitment of an additional 200,000 United States dollars to cover the

requirements of the United Nations Institute for Training and Research through June 1993. The actual additional requirements would be reported in the context of the final programme budget performance report for 1992-1993;

(b) No additional appropriation would be required at the present time.

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PROGRAMME BUDGET FOR THE BIENNIUM 1990-1991

Request for final appropriations for the biennium 1990-1991 on an ex post facto basis

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the Secretary-General's second report for final appropriations on an ex post facto basis for the biennium 1990-1991 (A/C.5/47/77/Add.1).

2. The Secretary-General's report provides updated information on the financial results of the biennium, on the basis of the closure of the accounts as at 31 December 1992 and supersedes the information provided in document A/C.5/47/77.

3. The Advisory Committee recalls that, when the accounts for the biennium were closed in March 1992, expenditure exceeded the amount which had been appropriated by the General Assembly in its resolution 46/184 A of 20 December 1991; the net amount of the excess was $11,971,200.

4. The Advisory Committee recalls its comments to the General Assembly at its forty-fourth, forty-fifth and forty-seventh sessions regarding expenditures in excess of allotments (A/44/543, para. 16; A/45/570 and Corr.1, para. 12; and A/47/500, para. 11). This problem has repeatedly been identified by the Board of Auditors in its reports, and the Advisory Committee, while recommending that "serious efforts should be made to evaluate thoroughly the present allotments system, with a view to establishing a system that is effective in monitoring expenditures", has also called for measures to monitor commitments with a view to reducing the level of unliquidated obligations (A/47/500, para. 11). The Committee has been assured that, with the introduction of the integrated management information system (IMIS), the incidence of expenditures exceeding appropriations would be brought under control.

5. Included in the expenditure referred to in paragraph 3 above was an amount of $55,813,200 in unliquidated obligations. In accordance with financial regulation 4.3, these obligations remained available for disbursement until 31 December 1992 except in the case of obligations against section 24 of the budget for which, under the provisions of General Assembly resolution 44/193 of 21 December 1989, the validity period for payment of these obligations would be until 31 December 1993.

6. The Advisory Committee notes from paragraph 6 of the Secretary-General's report that, in accordance with financial regulation 4.4, obligations amounting to approximately $1.5 million have been cancelled and transferred as a charge against current appropriations under sections 35 and 41 of the budget (A/C.5/47/77/Add.1). Upon closure of the accounts as at 31 December 1992, liquidation of other obligations has reduced the net excess over appropriation for the biennium 1990-1991 to $8,382,100.

7. As stated in paragraph 7 of the report, the Secretary-General is requesting an increase in the appropriation authorized for the biennium 1990-1991 in General Assembly resolution 46/184 A and an assessment on Member States for the amount of the increase. While the Advisory Committee agrees that a net amount of $8,382,100 would have to be appropriated, at this stage the Committee does not believe that it is necessary to assess that amount. The Committee recommends that the question of assessment in respect of that amount be dealt with in connection with the first performance report for the biennium 1992-1993.

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PROGRAMME BUDGET FOR THE BIENNIUM 1990-1991

Request for final appropriations for the biennium 1990-1991 on an ex post facto basis

Report of the Advisory Committee on Administrative and Budgetary Questions

Corrigendum

Page 2, paragraph 7, last line

For first performance report read second performance report

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FINANCING OF THE UNITED NATIONS OPERATION IN SOMALIA

Initial phase of the expanded size and mandate of UNOSOM

Report of the Secretary-General

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I. INTRODUCTION

1. By resolution 814 B (1993) of 26 March 1993, the Security Council decided to expand the size of the United Nations Operation in Somalia (UNOSOM) and authorized its mandate for an initial period through 31 October 1993. The expanded operation, UNOSOM II, would seek to complete through disarmament and reconciliation the task begun by the Unified Task Force (UNITAF). The transition from UNITAF to UNOSOM II will have to be effected progressively and, while it is difficult to determine when the transfer will be completed, for budgetary and administrative purposes the formal date of transfer of command from UNITAF to UNOSOM II will be 1 May 1993.

2. It is recalled that UNOSOM was established in Mogadishu following the adoption of Security Council resolution 751 (1992) on 24 April 1992 and the signing of the agreements reached in Mogadishu. The agreements required the United Nations to deploy United Nations Observers to monitor the cease-fire and to deploy United Nations security personnel to protect its personnel and safeguard its activities in continuing to provide humanitarian and other relief assistance in and around Mogadishu. UNOSOM's mandate was expanded by Security Council resolutions 767 (1992) of 27 July 1992 and 775 (1992) of 28 August 1992 to include four operational zones in Somalia and the deployment of some 3,500 military personnel.

3. Following the adoption of Security Council resolution 794 (1992) on 3 December 1992 by which the Council, acting under Chapter VII of the Charter of the United Nations, authorized the Secretary-General and Member States to establish a secure environment for humanitarian relief operations in Somalia, UNITAF was deployed in southern and central Somalia. At that time it was decided that UNOSOM would not be deployed at its full strength and would proceed in accordance with the Secretary-General's assessment of the conditions on the ground. Consequently, the military component of UNOSOM is currently made up of 50 military observers and 715 troops consisting of an infantry battalion of 500 and of movement and logistics elements and a headquarters company.

II. VOLUNTARY CONTRIBUTIONS

4. The Security Council, in paragraph 15 of its resolution 814 C (1993), requested the Secretary-General to maintain the fund established pursuant to Council resolution 794 (1992) for the additional purpose of receiving contributions for the maintenance of UNOSOM II forces following the departure of UNITAF forces and for the establishment of Somali police. The Council called upon Member States to make contributions to this fund in addition to their assessed contributions. The Trust Fund for Somalia has been established by the Secretary-General pursuant to the request contained in Security Council resolution 794 (1992). Member States are invited to make voluntary contributions to the Trust Fund.

III. PROPOSED EXPANSION OF THE UNITED NATIONS OPERATION IN SOMALIA

5. The latest report of the Secretary-General to the Security Council 1/ recommended that the role of UNOSOM be expanded and that a new mandate be authorized, the main elements of which are:

(a) To monitor that all factions continue to respect the cessation of hostilities and other agreements which they have signed, particularly the Addis Ababa agreements of January 1993;

(b) To prevent any resumption of violence and, if necessary, take appropriate action against any faction that violates or threatens to violate the cessation of hostilities;

(c) To maintain control of the heavy weapons of the organized factions which will have been brought under international control pending their eventual destruction or transfer to a newly constituted national army;

(d) To seize the small arms of all unauthorized armed elements and to assist in the registration and security of such arms;

(e) To secure or maintain security at all ports, airports and lines of communication required for the delivery of humanitarian assistance;

(f) To protect, as required, the personnel, installations and equipment of the United Nations and its agencies, the International Committee of the Red Cross as well as non-governmental organizations and to take such forceful action as may be required to neutralize armed elements that attack, or threaten to attack, such facilities and personnel, pending the establishment of a new Somali police force which can assume this responsibility;

(g) To continue the programme for mine-clearing in the most afflicted areas;

(h) To assist in the repatriation of refugees and displaced persons within Somalia;

(i) To carry out such other functions as may be authorized by the Security Council.

6. It would be necessary at the inception of the new mandate to deploy an overall military component of 28,000 all ranks, including 8,000 troops to provide logistic support. The bulk of the logistic element initially will come from UNITAF and will constitute an integral part of UNOSOM II. A greater part of the forces provided by the troop-contributing countries that were participating in UNITAF will support UNOSOM II under the operational control of the Force Commander of UNOSOM II. In addition it is estimated that the civilian staff component will not exceed 2,800 persons, both internationally and locally recruited.

IV. ESTIMATED COST OF UNOSOM II

7. In two addenda to the report of the Secretary-General to the Security Council, 2/ it was indicated that the estimated costs for UNOSOM II, taking into consideration the existing equipment already in place for UNOSOM, for a period of 12 months beginning 1 May 1993 would be $1,550 million and, for the first six-month period from 1 May to 31 October 1993, $856.4 million. As shown in annex I to the present report, it is currently estimated that for the first two months, i.e. May and June 1993, the cost of UNOSOM II will amount to $397.2 million (gross) and $396.0 million (net). Start-up costs of $186.3 million will be primarily for accommodation, emplacement, transport, communication and miscellaneous equipment, while operational costs will amount to $210.9 million gross ($209.7 million net). Annex II provides supplementary information for the two-month estimates.

8. The preparation of a precise budget estimate requires more time for the collection and assessment of detailed information on the requirements of UNOSOM II. It is proposed that resources be provided to UNOSOM II for its operation for an initial period of two months. During this time detailed cost estimates for the first six-month period beginning 1 May 1993 will be prepared.

9. It is recalled that the General Assembly, by its resolution 47/41 of 1 December 1992, had apportioned an amount of $109.7 million gross ($107.9 million net) among Member States. Of this amount, as at 28 March 1993, contributions totalling $58.9 million remain outstanding. Pending the submission of a detailed performance report for UNOSOM, it is now estimated that an unencumbered balance of some $70 million will be available at the end of April 1993 from the appropriation provided to UNOSOM. The net amount that will be required for the first two months of the operation of UNOSOM II beginning 1 May 1993 and including the start-up costs would be $327.2 million gross ($326.0 million net).

V. FINANCIAL ADMINISTRATION OF UNOSOM II

10. The Secretary-General recommends that the existing Special Account that was established for UNOSOM in accordance with General Assembly resolution 47/41 should continue to be used for the purpose of accounting for income received and expenditures made in respect of UNOSOM II. The Secretary-General further recommends that the financial accounting for UNOSOM II should begin on 1 May 1993.

VI. ACTION TO BE TAKEN BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION

11. In order to provide UNOSOM II with the required resources, including obtaining in a timely manner additional premises and accommodation, transport and communications equipment, the emplacement of additional troops as well as other essential items, the General Assembly is requested to approve an additional appropriation of $327.2 million gross ($326.0 million net) to cover requirements for the first two months of UNOSOM II.

Notes

1/ S/25354.

2/ S/25354/Add.1 and 2.

ANNEX I

Cost estimate of the United Nations Operation in Somalia II
from 1 May to 30 June 1993

(Thousands of United States dollars)

	Cost estimate		
	Start-up costs	1 May to 30 June '93	Total
1. Military component			
(a) Contingent personnel	0.0	108 000.0	108 000.0
(b) Other costs pertaining to contingents	0.0	33 000.0	33 000.0
2. Civilian police training programme	4 000.0	1 000.0	5 000.0
3. Civilian staff costs	0.0	15 000.0	15 000.0
4. Premises, rental and maintenance	90 000.0	10 000.0	100 000.0
5. Air operations			
(a) Helicopters	1 300.0	24 700.0	26 000.0
(b) Fixed-wing aircraft	0.0	4 000.0	4 000.0
6. Vehicle operations	19 000.0	7 000.0	26 000.0
7. Communications	15 500.0	500.0	16 000.0
8. Miscellaneous equipment	26 100.0	900.0	27 000.0
9. Supplies and services	5 900.0	2 100.0	8 000.0
10. Air and surface freight	18 500.0	500.0	19 000.0
11. Mine-clearing operations	6 000.0	2 000.0	8 000.0
12. Support costs	0.0	1 000.0	1 000.0
13. Staff assessment	0.0	1 200.0	1 200.0
TOTAL, lines 1-12	186 300.0	210 900.0	397 200.0
14. Income from staff assessment	0.0	(1 200.0)	(1 200.0)
NET TOTAL	186 300.0	209 700.0	396 000.0

/...

ANNEX II

Supplementary information to the cost estimate of the United Nations Operation in Somalia II for the period from 1 May to 30 June 1993

	United States dollars
1. Military component	108 000 000

(a) Contingent personnel

It is estimated that 26,000 troops will be in the mission area on 1 May 1993 and the remaining 2,000 will arrive within three weeks. Provision is made for reimbursement to troop-contributing Governments for pay and allowances plus a usage factor to cover the cost of personal gear and weapons of contingent personnel, at standard rates approved by the General Assembly ($69,500,000), rations at the rate of $15 per person per day ($30 million), a daily allowance of $1.28 per person, recreational leave allowance and welfare supplies ($3,700,000) and initial travel to the area of about 10,400 troops ($4,800,000).

(b) Other costs pertaining to contingents 33 000 000

Provision is made to cover the diminution in value of contingent-owned equipment placed at the disposal of UNOSOM II based on an in-survey value of approximately $1,000 million and an annual reimbursement rate of 20 per cent of the equipment value ($33 million).

2. Civilian police training programme 5 000 000

Provision is made for a training programme to establish an auxiliary police force in the Mogadishu area and covers equipment and supplies ($4 million) and allowances for local police and allowances and travel for the training experts ($1 million).

3. Civilian staff costs 15 000 000

Provision is made for approximately 2,000 civilian personnel, both internationally and locally recruited, to provide the substantive and administrative functions of the mission and includes salaries and common staff costs, and travel to Somalia ($11 million) and mission subsistence allowance ($2 million). Provision is made also for approximately 300 United Nations volunteers ($2 million).

4. Premises, rental and maintenance 100 000 000

Provision is made for the rental of office and living accommodation ($400,000), repairs and renovations through contractual arrangements and maintenance of premises at all locations throughout the mission area, including the former military academy in Mogadishu, which will become the mission headquarters ($5 million), prefabricated housing units to be used for office and living accommodation ($85 million) and infrastructure repairs throughout

Somalia, including repair and renovation of roads, bridges and airport and harbour facilities ($9,600,000).

5. Air operations

(a) Helicopters 26 000 000

Provision is made for the hire of 50 tactical military helicopters from Governments at fixed rates for hours actually flown ($21 million), aviation fuel ($1,200,000), positioning/depositioning, third-party liability insurance and painting of helicopters ($1,300,000) and other operational requirements including landing fees, air traffic control services, parking and towing fees, etc. ($2,500,000).

(b) Fixed-wing aircraft 4 000 000

Provision is made for the commercial hire of 1 light passenger aircraft, 1 medium-size passenger/cargo aircraft, 8 medium-size cargo aircraft, and 3 medium/heavy aircraft ($3,500,000), aviation fuel ($400,000) and painting, positioning and depositioning ($100,000).

6. Vehicle operations 26 000 000

Provision is made for the purchase of approximately 650 additional vehicles plus 50 trailers ($18,500,000), spare parts, repairs and maintenance of all mission vehicles including up to 6,000 military pattern vehicles ($4,300,000), petrol, oil and lubricants ($2,800,000) and insurance ($400,000).

7. Communications 16 000 000

Provision is made for additional communications equipment to provide internal communications between mission headquarters and the brigade headquarters plus all external communications ($13,600,000), test and workshop equipment, communications, spare parts and supplies ($2,200,000), and the rental of satellite transponders, satellite communications, terminals, user charges and postage, telephone and pouch ($200,000). A military signals unit will provide internal communications below brigade level plus other internal communications until the civilian network is established.

8. Miscellaneous equipment 27 000 000

Provision is made for the purchase of generators ($15 million), data-processing equipment ($6 million), office furniture and equipment ($1,900,000), petrol and water tanks ($1,200,000), tentage ($200,000), medical, observation and water purification equipment ($1 million) and spare parts, repair and maintenance of equipment ($1,700,000).

9. Supplies and services 8 000 000

Provision is made for contractual and other services covering laundry and cleaning, haircutting and tailoring services for the military contingents ($1,300,000), medical supplies and services, including vaccine ($1,200,000), military uniform items, United Nations flags and decals, fragmentation jackets,

helmets ($1,200,000), field defence stores, quartermaster and general stores ($300,000), sanitation and cleaning materials ($300,000), office and stationery items, including electronic data processing and reproduction supplies ($200,000), public information programmes ($200,000) and electrical supplies ($3,300,000).

10. Air and surface freight 19 000 000

Provision is made for sealifts of transport vehicles and other equipment of about 14 battalions to the area of operations ($16 million), for military airlifts of equipment and supplies ($2,500,000) and for freight and clearing charges not included elsewhere ($500,000).

11. Mine-clearing operations 8 000 000

Pending the finalization of a detailed mine-clearing plan, provision is made for equipment and supplies, outside technical experts, rental of training facilities and general operating expenses ($8 million).

12. Support costs 1 000 000

Partial provision is made for the funding of the Support Account for Peace-keeping Operations ($1 million).

13. Staff assessment 1 200 000

The estimate under this heading represents the difference between the gross and net emoluments, that is, the amount of staff assessment to which United Nations staff members are subject, in accordance with the Staff Regulations of the United Nations.

14. Income from staff assessment ..... (1 200 000)

The staff assessment requirement provided for under line item 13 has been credited to this item as income from staff assessment and is credited to the Tax Equalization Fund established by the General Assembly in its resolution 973 A (X) of 15 December 1955. Member States are given credit in the Fund in proportion to their rates of contribution to the UNOSOM II cost estimates.

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REQUEST FOR THE INCLUSION ON AN ADDITIONAL ITEM IN THE AGENDA OF THE FORTY-SEVENTH SESSION

EMERGENCY ASSISTANCE TO CUBA

Letter dated 31 March 1993 from the Permanent Representative of Barbados to the United Nations addressed to the Secretary-General

I have the honour to address you on behalf of the Group of Latin American and Caribbean Member States to request, in accordance with rule 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the forty-seventh session of the General Assembly of an additional item entitled "Emergency assistance to Cuba".

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum concerning the request is annexed to the present letter.

(Signed) E. Besley MAYCOCK
Permanent Representative of Barbados
Chairman of the Latin American
and Caribbean Group

ANNEX

Explanatory memorandum

From the night of Friday, 12 March, onwards, the western and central provinces of Cuba were affected by an atmospheric phenomenon, identified as a cold front associated with a low pressure system, that produced winds of up to 200 kilometres per hour and waves of up to 25 feet. Eight of the 14 Cuban provinces were seriously affected on account of the high winds and violent sea-water flooding in the coastal areas, which caused loss of life and injuries, as well as a large number of displaced persons and grave damages not only to homes but also to industrial and service installations and to both staple and export crops.

Preliminary estimates of losses are over $1 billion; 5 deaths were reported, 95 people were injured and 147,680 persons were directly affected. Hundreds of thousands of persons suffered heavy losses, with tens of thousands in temporary shelters. A total of 1,484 homes were totally destroyed and 36,401 partially destroyed; 3,248 production and service installations were either destroyed or suffered widespread damage, including hospitals, schools, industries, communication lines and roads, drinking water, sanitation and food storage installations and port facilities.

Staple crops, such as bananas, other fruits and vegetables and potatoes, as well as export crops of tobacco, citrus fruits and coffee, were seriously damaged. A total of 2,810 agricultural installations were affected, and tens of thousands of head of cattle were lost. The sugar harvest, at its peak at the time of the storm, also suffered directly, while a number of finished products from the sugar industry were lost.

Industries such as those for steel production, refrigeration and industrial machinery were paralysed; a number of hotels for tourism suffered serious damage; and transport units, fishing vessels and facilities in the Port of Havana, including high-powered cranes and storage facilities, were either partially or totally destroyed.

Intense sea-water flooding also caused the loss of full stocks of antibiotics and vaccines, blood banks and laboratory facilities, among others, in hospitals in the affected areas.

Although national efforts have been fully deployed to counter the effects of the storm, with immediate emphasis on the alleviation of human suffering, and although some international aid has been received in the country, the Group of Latin American and Caribbean States considers it necessary that the United Nations, through the inclusion of the corresponding item in the agenda of the forty-seventh session of the General Assembly, the adoption of a resolution and the granting of direct aid, encourages the provision of massive international assistance to Cuba on account of the severity of the losses and of the widespread damage to the Cuban economy caused by this atmospheric phenomenon.

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Forty-eighth year

Letter dated 31 March 1993 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to enclose the text of a statement on Bosnia and Herzegovina made by the Turkish Ministry of Foreign Affairs on 30 March 1993 (see annex).

I would be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 143, and of the Security Council.

(Signed) Mustafa AKŞIN
Ambassador
Permanent Representative

ANNEX

Statement on Bosnia and Herzegovina issued on 30 March 1993 by the Ministry of Foreign Affairs of Turkey

The Vance-Owen plan, designed to achieve a peaceful settlement in Bosnia and Herzegovina, took its final form in the talks in New York. With the signing of the plan by H.E. Alija Izetbegovic, President of the Republic of Bosnia and Herzegovina, on 25 March 1993, two of the three peoples living in Bosnia and Herzegovina have endorsed and signed the plan. At this stage, reaching a peaceful settlement, healing the wounds and restoring order in the country will depend on the acceptance of the plan by the third party.

Turkey considers the acceptance of the peace plan by Bosnia and Herzegovina, a member of the United Nations and a partner of the international community, at a time when the attacks to destroy its existence continue, to be a sound, wise and courageous step which displays its sincere commitment to peaceful approaches and solutions even if the conditions may be onerous. Turkey believes that this generous stance will be appreciated by the international community.

Since the beginning of the war, Turkey has been playing an active role to end the aggression against Bosnia and Herzegovina and to stop the ongoing inhuman practices in this country. Through bilateral and multilateral contacts, Turkey has tried to focus the attention of world public opinion and its constructive activities to the settlement of the problem.

It is now time for the international community and the United Nations to undertake the obligation and the responsibility to implement this plan and turn it into a lasting solution. We agree with the justified elements identified by the President of the Republic of Bosnia and Herzegovina when signing the plan :

- The aggressor side should sign the plan within a reasonable time frame.
- The international community should undertake effective measures for the enforcement of the plan.
- The aggression should be stopped at once.

If the aggressor side fails to display peaceful conduct, the resolution concerning the no-fly zone should be enforced and heavy weapons threatening civilians should be placed under the control of the United Nations immediately. If these measures fail to produce results, the lifting of the arms embargo on Bosnia and Herzegovina and Croatia, which has left the civilian people defenseless, would be a natural step to take to ensure their exercise of the legitimate right to self-defence as provided in the UN Charter.

Bosnia and Herzegovina has been a victim of continuing grave violations of universal principles for many months. The determination which should be displayed by the international community regarding the enforcement of the sanctions imposed on the aggressor must be no different than the measures taken in other regions by the United Nations. By tackling problems in compliance with legal norms, the international community and international organizations will have ensured their own respectability.

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GENERAL ASSEMBLY
Forty-seventh session
Agenda items 30, 35, 73 and 74
QUESTION OF PALESTINE
THE SITUATION IN THE MIDDLE EAST
UNITED NATIONS RELIEF AND WORKS
AGENCY FOR PALESTINE REFUGEES
IN THE NEAR EAST
REPORT OF THE SPECIAL COMMITTEE TO
INVESTIGATE ISRAELI PRACTICES
AFFECTING THE HUMAN RIGHTS OF
THE PALESTINIAN PEOPLE AND OTHER
ARABS OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Forty-eighth year

Letter dated 1 April 1993 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

Pursuant to my recent letters on the dangerous and deteriorating situation in the occupied Palestinian territory, including Jerusalem, I would like to bring to your attention the fact that the repressive policies and practices of Israel, the occupying Power, against the Palestinian people are continuing and escalating. Recently, these policies and practices took on additional dimensions when, on 30 March 1993, the Israeli Government declared several new repressive measures, namely the sealing off of all the occupied territory, except Arab Jerusalem, which effectively divided the West Bank into two separate, isolated parts; the increasing of the number and activities of the armed forces in the occupied territory; and the changing of open-fire regulations for Israeli soldiers against Palestinian civilians.

During the month of March alone, the number of Palestinian casualties at the hands of the Israeli army and the armed colonial settlers have amounted to 28 Palestinian civilians killed, including 11 children under 16 years of age, and more than 800 injured. In addition, other Israeli practices, which frequently constitute collective punishment, have continued unabated, such as the destruction of homes through the use of anti-tank missiles, deportation, imposition of curfews, administrative detention, the uprooting of trees and crops, and so on.

The recent Israeli measure of closing the occupied territory gives us another example of the configuration of the Israeli positions. On the one hand, Israel wants to punish the Palestinian people, even if that means de facto recognition of the distinct and separate nature of the Palestinian territory. Yet, on the other hand, Israel continues to refuse to recognize the Palestinian territory as an occupied one or even to admit that it is not an Israeli land.

I would like also to refer to the letter of the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General, dated 29 March 1993 (S/25485), which is another example of the Israeli attitude undermining the efforts of several parties who have been seeking to limit the negative effects on the current peace process of the Israeli policies and practices against our people.

It is hard to believe the extent of the inconsideration of that letter and the attempts made to twist the facts of the situation and, more importantly, to disregard the real reasons behind the dangerous situation prevailing today. Unfortunately, the letter reflects the official Israeli policy, which is insistent upon not recognizing the Israeli occupation itself, and its continuity for 26 years, as the underlying cause of the prevailing situation in the Palestinian territory. This policy is also insistent upon not recognizing that the "Israeli citizens" present in the occupied Palestinian territory are in fact colonial settlers brought there by the Israeli authorities in flagrant violation of the Fourth Geneva Convention and against numerous Security Council resolutions as well as resolutions of other United Nations organs. It is also insistent upon not admitting the effect of the organized Israeli actions and practices, which have been continuously condemned by the international community, and which have resulted in destroying the Palestinian economic and social structures and preventing the Palestinian people from exercising their national rights.

There is no normal human being who would not regret the bloodshed of any civilian, whether Arab, Jewish or any other civilian caught in the midst of a conflict. However, it is only racist thinking that can lead to blaming the victim and to labelling the occupied as "terrorist" when he or she is merely reacting to the occupier's policies and practices or when he or she resists the occupation.

For our part, we have tried in our past letters to avoid personal accusations and distasteful name-calling in spite of the vast amount of offensive positions expressed by several Israeli officials, including the Prime Minister of Israel, Mr. Rabin, expressing his wish "to see Gaza drown into the sea", and including members of the parliament such as Mr. Shamir and Mr. Eitan calling for the killing of any Palestinian who may think of killing any Jew, even after that Palestinian is apprehended. Those calls were effectively heeded when colonial settlers from the Sussiah settlement near Al-Khalil caught, on 23 March 1993, a 19-year-old youth from Yatah, Jawad Jamil Hoshia, bound his hands, tortured him for some time, and then shot him in the head.

In spite of the above-mentioned harsh realities, the official Palestinian policy remains unchanged, both with regard to the criteria of the intifadah of the Palestinian people against the Israeli occupation and with regard to the Palestinian commitment to the current peace process, to which we have made a lot

of contributions in an effort to see it succeed. At the same time, we have made it clear that the Israeli policies and practices against our people, including the deportation by Israel of more than 400 Palestinian civilians on 17 December 1992, Israeli non-compliance with resolution 799 (1992) of 18 December 1992, and the continuous repression of our people under occupation, seriously undermine the prospects of the peace process. We believe that these represent serious obstacles that must be removed for the peace process to resume and succeed.

At the same time, we repeat our call for the international community, and specifically the Security Council, to shoulder its responsibility and to provide protection for the Palestinian people, in accordance with Security Council resolution 681 (1990) of 20 December 1990. In this regard, we refer to the request made on 22 March 1993 by the Chairman of the Arab Group for the month of March on behalf of the Group for the Security Council to meet in order to consider the "serious situation in the occupied Palestinian territories, including Jerusalem".

I would be grateful if you would arrange to have the text of the present letter distributed as an official document of the General Assembly, under agenda items 30, 35, 73 and 74, and of the Security Council.

(Signed) Nasser AL-KIDWA
Permanent Observer of Palestine
to the United Nations

UNITED
NATIONS

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General Assembly Security Council

Distr.
GENERAL

A/47/920
S/25512
2 April 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-seventh session
Agenda item 143
THE SITUATION IN BOSNIA AND
HERZEGOVINA

SECURITY COUNCIL
Forty-eighth year

Letter dated 31 March 1993 from the representatives of Egypt, the Islamic Republic of Iran, Malaysia, Pakistan, Saudi Arabia and Senegal to the United Nations addressed to the Secretary-General

On behalf of the members of the Organization of the Islamic Conference, and in our capacity as members of the Contact Group of OIC on Bosnia and Herzegovina, and pursuant to paragraph 2 of Security Council resolution 808 (1993) of 22 February 1993, we have the honour to submit, attached to the present letter, the text of the recommendations of OIC on the establishment of an ad hoc international war crimes tribunal for the territory of the former Yugoslavia (see annex).

We would be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 143, and of the Security Council.

(Signed) Nabil A. ELARABY
Ambassador
Permanent Representative of Egypt

(Signed) REDZUAN M. Kushairi
Minister
Chargé d'affaires a.i.
Deputy Permanent Representative
of Malaysia

(Signed) Gaafar M. ALLAGANY
Ambassador
Chargé d'affaires a.i.
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of Saudi Arabia

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(Signed) Kamal KHARRAZI
Ambassador
Permanent Representative of the
Islamic Republic of Iran

(Signed) Jamsheed K. A. MARKER
Ambassador
Permanent Representative of Pakistan

(Signed) Kéba Birane CISSE
Ambassador
Permanent Representative of the
Republic of Senegal

ANNEX

Recommendations of the Organization of the Islamic Conference on the establishment of an ad hoc International War Crimes Tribunal for the territory of the former Yugoslavia

I. AUTHORITY, JURISDICTION AND COMPETENCE OF THE TRIBUNAL

1. An ad hoc Tribunal shall be established pursuant to a Security Council resolution under Chapter VII of the Charter of the United Nations to prosecute war crimes and crimes against humanity committed in the territory of the former Yugoslavia on or after 1 January 1991.

2. The Statute of the Tribunal shall be approved by the General Assembly within 30 days of the date of adoption of a resolution by the Security Council establishing the Tribunal, under Chapter VII.

3. Funding of the Tribunal should be authorized by the General Assembly.

4. All Member States are obliged to cooperate with and support the Tribunal and its various organs and to enforce its orders and decisions, and to arrest and transfer indicted persons to the jurisdiction of the Tribunal.

5. No State or individual shall have the right to challenge the Tribunal's establishment, its applicable law, judicial composition, organizational structure, jurisdiction or competence. Any challenge of a procedural nature shall be exclusively heard and decided by the Tribunal in accordance with its procedures and rules.

6. The Tribunal's jurisdiction over individuals is exclusive and cannot be defeated by any national exercise of jurisdiction. Subject to the primary jurisdiction, any Member State can exercise its jurisdiction on the basis of the theory of universality.

II. APPLICABLE LAW

1. The crimes over which the Tribunal shall exercise its jurisdiction and the applicable law shall be as follows:

(a) War crimes, violations of the Geneva Conventions of 12 August 1949 and of the Additional Protocols of 10 June 1977, as well as any other war crime under customary international law and other relevant treaties;

(b) Genocide, violations of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;

(c) Crimes against humanity, as defined in articles 6 (c) and 5 (c) of the London and Tokyo Charters, respectively, and as further developed by customary international law, which includes: murder, torture, mutilation, rape, reducing or keeping a person in a state of slavery, servitude or forced labour, deporting or forcibly transferring populations, systematic pillage and looting, systematic

destruction of public and private property, when committed as part of a policy of persecution on social, political, racial, religious or cultural grounds;

(d) Torture, in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 10 December 1984.

2. The Tribunal shall be competent to try persons accused of responsibility for such crimes at any level, whether as leaders, intermediaries or subordinates, and no form of immunity shall be deemed a bar to prosecution.

3. The fact that an individual is performing official duties shall not be a defence.

4. The order of a superior shall not be a defence.

III. GUIDING PRINCIPLES ON PENALTIES, PROCEDURES AND EVIDENCE

1. The Tribunal shall investigate, prosecute, judge and impose penalties on those individuals found guilty in accordance with the applicable law and procedures of the Tribunal based on respect of the rights of the victims and the accused.

2. Basic principles, norms and standards of due process and procedural fairness recognized by international human rights and international humanitarian law shall be established in the Statute. The Tribunal shall, in accordance with those principles, promulgate detailed rules of procedure and evidence before it commences operations.

3. The Statute shall set forth provisions for the Tribunal with respect to evidentiary matters, including in particular those necessary for the protection of victims and witnesses from reprisals and embarrassment, the more so with respect to victims of torture and rape.

4. There shall be a victim compensation scheme.

5. Governments found responsible for crimes committed by individuals in the service of such Governments or acting for and on behalf of such Governments should be required under principles of State responsibility to pay such compensation.

6. Penalties shall be promulgated by the Tribunal before it starts adjudicating cases but on the basis of provisions established in the Statute. Penalties shall be based on "general principles" of law as they exist in the world's major legal systems.

7. Accused persons who refuse to appear before the Court or are not surrendered to the Tribunal shall be the subject of a public indictment accompanied by an internationally valid warrant for their arrest to be executed by all Member States.

8. All Member States shall have jurisdiction to prosecute a person charged with a crime by the Tribunal if the Tribunal is no longer in existence.

9. The principle ne bis in idem shall apply to the Tribunal's judgements. The Tribunal, however, shall not be bound by the exercise of jurisdiction of any State if it deems that the national proceedings were conducted for the purposes of defeating the Tribunal's jurisdiction or that the proceedings were designed to shield the accused from criminal responsibility.

IV. COMPOSITION OF THE TRIBUNAL

1. The Tribunal's organs shall be composed of:

(a) The Court;

(b) The Procurator-General;

(c) The Secretariat.

2. The Court shall consist of seventeen judges, one of whom shall be elected by them to be the President, and an equal number of alternate judges to serve as alternate for any judge unable to fulfil his or her judicial functions.

3. The judges shall be persons of high competence in international criminal law and human rights law, of high moral integrity, impartiality and independence. They shall represent, on an equitable geographic basis, the world's major legal systems, with particular representation from the Islamic countries and with due regard to gender representation.

4. The General Assembly and Security Council shall elect the judges along the lines of the procedure for the election of judges to the International Court of Justice.

5. The Court shall be divided in three adjudicating chambers, one indicting chamber and one appellate chamber. All chambers except the latter shall consist of three judges, the appellate chamber of five judges.

6. The appointment of judges to the chambers shall be done by a random system established by the rules of the Court.

7. The Secretary-General of the United Nations shall appoint an independent Chief Prosecutor with demonstrated expertise and commitment, on the basis of recommendations by Member States.

8. The Chief Prosecutor shall appoint, direct and supervise a staff of deputy and assistant Prosecutors, as well as a staff of investigators. The deputy and assistant Prosecutors shall include representatives on an equitable geographic basis, from the world's major legal systems, with particular representation from the Islamic countries and with due regard to gender representation.

9. The Chief Prosecutor shall publicize all indictments, alerting all Member States to apprehend any indicted persons within their borders and to submit them to the jurisdiction of the Tribunal.

10. The Prosecutors shall have the duty to prosecute all cases where substantiated charges are made.

11. The Chief Prosecutor shall not have the authority to grant immunity from prosecution without the consent of the indicting chamber and only in cases where it is demonstrated to be in the best interest of justice.

12. The Prosecutors shall receive full cooperation from Member States, including the cooperation of law enforcement agencies.

13. The Prosecutor's office shall be properly funded and shall have sufficient resources to conduct investigations, secure credible evidence, hire appropriate experts, store and organize evidence, engage the participation of witnesses and victims, and provide appropriate protection to witnesses and victims.

V. ADJUDICATION

1. The Tribunal shall respect the rights of victims and witnesses and shall, where appropriate, provide for:

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(c) Reception of evidence by means of affidavits, video tape and recordings, provided that the Tribunal may, at its discretion, require affiants to appear for cross-examination; and

(d) Conduct special hearings at locations within the territory of the former Yugoslavia.

2. Defendants shall have the right to apply to the Tribunal for release pending trial or modification of detention measures. The Tribunal shall permit release only upon being satisfied that the defendant is not likely to flee, not likely to constitute a threat to international peace and security, and not likely to intimidate or endanger potential witnesses. In such cases, the Tribunal shall require the posting of an appropriate bond to secure the appearance of the defendant at the trial.

3. Defendants who are unable to pay for legal assistance shall have the right to have counsel appointed.

4. Each trial before the Tribunal shall be heard by at least three judges and at least one alternate in the event a judge becomes incapacitated.

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1. Upon determination of guilt, a separate hearing shall be held on sentencing. At the sentencing hearing, the prosecution and defence may present evidence of aggravation or mitigation, and witnesses and victims shall be permitted to present relevant testimony.

2. Considering the gravity of the crimes alleged, the Tribunal shall have authority to render all appropriate penalties and to supervise their execution.

3. The Tribunal shall have authority to order confiscation and/or restitution of the proceeds of the criminal conduct and to order damages to compensate victims for their injuries and losses arising from the criminal conduct.

4. The prosecution and the defence may appeal a judgement where it is shown that:

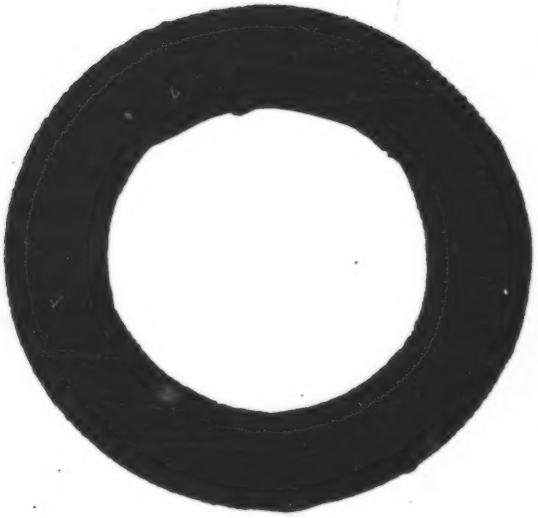
(a) There is newly discovered evidence which would probably alter the judgement and which by due diligence could not have been discovered at the time the judgement was entered;

(b) A fraud upon the Tribunal was committed which substantially affected the judgement; or

(c) The facts proved do not constitute a crime within the jurisdiction of the Tribunal;

(d) The judgement is in error as to the law or facts.

5. Pardons shall not be granted and sentences shall not be reduced, except by a pardon board established by the Security Council.



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5 April 1993

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GENERAL ASSEMBLY
Forty-seventh session
Agenda item 143
THE SITUATION IN BOSNIA AND
HERZEGOVINA

SECURITY COUNCIL
Forty-eighth year

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* Reissued for technical reasons.

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UNITED
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General Assembly Security Council

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2 April 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-seventh session
Agenda item 111
SCALE OF ASSESSMENTS FOR THE
APPORTIONMENT OF THE EXPENSES
OF THE UNITED NATIONS

SECURITY COUNCIL
Forty-eighth year

Letter dated 31 March 1993 from the Permanent Representative of Croatia to the United Nations addressed to the Secretary-General

I have the honour to refer to the letter by Mr. Dragomir Djokić, Chargé d'affaires a.i. of the Permanent Mission of a country provisionally referred to as the "Federal Republic of Yugoslavia (Serbia and Montenegro)" - addressed to you, and enclosing a letter from the Federal Minister for Foreign Affairs of the "Federal Republic of Yugoslavia (Serbia and Montenegro)", Mr. Vladislav Jovanović (A/C.5/47/91).

Mr. Jovanović, while aiming to clarify the position of his Government concerning the scale of assessments determining the contributions of his country to the United Nations budget, gives some ill-founded and misleading information with regard to the continuity of the international personality from the former Socialist Federal Republic of Yugoslavia (SFRY) to the "Federal Republic of Yugoslavia (Serbia and Montenegro)".

In his letter, Mr. Jovanović underlines that "the Federal Republic of Yugoslavia as a Member of the United Nations, continuing the personality of the Socialist Federal Republic of Yugoslavia under international law ... will continue to fulfil its obligations under the United Nations Charter and the decisions of the respective United Nations bodies".

There can be no dispute with regard to the present status of the membership of the "Federal Republic of Yugoslavia (Serbia and Montenegro)" in the United Nations. The General Assembly, by its resolution 47/1 of 22 September 1992, decided that "the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations" (para. 1). Since a Member of the Organization would not be asked by the same Organization that it should apply for membership, it can only be concluded that the entity in question is

presently not a Member. However, owing to other circumstances, the representatives of the "Federal Republic of Yugoslavia (Serbia and Montenegro)" are still participating in the work of the Security Council and they have not yet been denied access to Headquarters premises.

Furthermore, by implying that the "Federal Republic of Yugoslavia (Serbia and Montenegro)" is a sole successor of the former SFRY and by stating that it is the continuation of its international personality, Mr. Jovanović is omitting the existence of both resolution 47/1 and Security Council resolution 777 (1992) of 19 September 1992, which consider "that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations".

Had the international community deemed it possible and legally founded, it would undoubtedly grant the "Federal Republic of Yugoslavia (Serbia and Montenegro)" the right to succeed the former SFRY to the extent determined by international law. On the contrary, the international community has recognized that the former common State has disintegrated and "ceased to exist", and that there are several successor States to it.

That was reiterated in the views of the representatives of the States members of the Security Council in the explanations of vote when adopting resolution 777 (1992). The representative of the United States of America stated that fact most clearly when he expressed the view that for the first time the United Nations was facing the dissolution of one of its Members without agreement by the successor States on the status of the original United Nations seat. Furthermore, he emphasized that none of the former republics of the former Yugoslavia was so clearly a predominant portion of the original State as to be entitled to be treated as the continuation of that State; therefore the United States could not accept Serbia/Montenegro's claim to the former Yugoslavia's seat.

The dissolution of the former SFRY resulted in five new sovereign States; some of them are Members of the United Nations, and some of them not as yet. There is not and there cannot be any sole successor to that former State's international personality.

I would ask for your kind assistance in distributing the present letter as a document of the General Assembly, under agenda item 111, and as a document of the Security Council.

(Signed) Mario NOBILO
Ambassador
Permanent Representative

UNITED NATIONS

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General Assembly Security Council

Distr.
GENERAL

A/47/922
S/25540
6 April 1993

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GENERAL ASSEMBLY
Forty-seventh session
Agenda items 91, 97 (c), 129 and 143
ELIMINATION OF RACISM AND RACIAL DISCRIMINATION
HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FOURTH SESSION
THE SITUATION IN BOSNIA AND HERZEGOVINA

SECURITY COUNCIL
Forty-eighth year

Letter dated 6 April 1993 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General

Upon instructions, I have the honour to forward herewith the text of a memorandum by the Government of Brazil on aspects related to the implementation of Security Council resolution 808 (1993), of 22 February 1993, regarding the establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 91, 97 (c), 129 and 143, and of the Security Council.

(Signed) Ronaldo Mota SARDENBERG
Ambassador
Permanent Representative of Brazil
to the United Nations

ANNEX

Memorandum dated 31 March 1993 by the Government of Brazil on aspects related to the implementation of Security Council resolution 808 (1993)

1. Brazil has condemned in the strongest terms the serious war crimes and crimes against humanity committed in the ongoing conflict in the territory of the former Socialist Federal Republic of Yugoslavia. Those horrendous acts have shocked and outraged the Government of Brazil and Brazilian society. They call for strong action by the international community, including through the United Nations, to uphold the fundamental values of justice and the dignity of the human person. There can be no doubt that the perpetrators of such crimes must be held personally accountable for their acts and must be brought to justice.

2. To that end, the Government of Brazil favours the establishment of an international tribunal to prosecute and try persons found to be responsible for serious violations of international humanitarian law committed in the territory of the former Socialist Federal Republic of Yugoslavia since the outbreak of conflict in 1991. In that spirit, Brazil voted in favour of Security Council resolution 808 (1993) of 22 February 1993 and attaches great importance to the work now being carried out by the Secretary-General in preparing the report to be submitted to the Security Council in accordance with paragraph 2 of that resolution.

3. The discussions and studies carried out for some time by the International Law Commission concerning the possibility of an international criminal jurisdiction and the related subject of a draft code of crimes against the peace and security of mankind are indicative of the legal and practical difficulties involved in the structuring and the operation of any such international jurisdiction. Not only are those difficulties of a technical nature, but they also relate to the problem of ensuring the political support that is required for an international court to be a meaningful institution.

4. The creation of an international criminal tribunal ought to reflect a careful and comprehensive examination of the extremely complex issues involved in this initiative. To that end, a wide spectrum of consultations with legal experts from different countries and different legal systems should prove to be extremely useful. Prior studies undertaken on this and related subjects, as well as the records of intergovernmental discussions and deliberations, such as those undertaken in the Sixth Committee of the General Assembly, can also provide valuable elements for the success of the endeavours resulting from resolution 808 (1993).

5. The Government of Brazil has carefully considered the suggestions submitted by other Member States, notably those contained in the documents recently presented to the Security Council by France (S/25266), Italy (S/25300) and Sweden, on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE) (S/25307). Brazil expresses its appreciation for the suggestions set out in those documents, which can constitute, in many aspects, important inputs for the work to be carried out by the Secretariat.

6. The general position of the Government of Brazil on this question was expressed in the statement made in the Security Council by the delegation of Brazil on the occasion of the adoption of resolution 808 (1993) (see S/PV.3175, pp. 4-7). The following additional comments refer to specific aspects related to the implementation of that resolution. The Government of Brazil deems it important that these points be duly taken into account in the deliberations relating to the implementation of resolution 808 (1993).

7. The international tribunal referred to in paragraph 1 of resolution 808 (1993) should be an ad hoc independent non-political body. It should be impartial and effective in its work. All stages and aspects of its work must be accomplished in strict observance of the due process of law.

8. The international tribunal should be based on a solid legal foundation that ensures, in a transparent and unobjectionable manner, the legitimacy of its decisions. Legitimacy is required, first and foremost, as an essential element inherent in the idea of justice, but also as an important factor for the effectiveness of the work of the tribunal.

9. The question of the method by which the tribunal is to be established calls for particular attention.

10. It should be established in such a way as to allow it to have jurisdiction over all cases of serious violations of international humanitarian law committed in the territory of the former Yugoslavia by any of the parties to the conflict during an agreed period of time.

11. The international system is based on the existence of a plurality of equally sovereign States. In such a system, which lies at the very foundation of the United Nations, the assertion and the exercise of criminal jurisdiction are essential attributes of national statehood. As a result, criminal jurisdiction cannot be presumed to exist, virtually or in actuality, at the international level.

12. Except under very special circumstances, such as those which prevailed at the end of the Second World War and which made possible the establishment of the Nuremberg and Tokyo International Military Tribunals, criminal jurisdiction can only exist, and be exercised, at the international level if and when it is conferred upon an international body by the State or States concerned.

13. In the light of the above, the most appropriate and effective method for establishing the international tribunal referred to in resolution 808 (1993) would appear to be along the lines suggested in the proposal for an international war crimes tribunal for the former Yugoslavia prepared by the CSCE rapporteurs (S/25307). That method would include the conclusion of a convention setting up an ad hoc international jurisdiction and containing the terms of reference for its exercise, including the text of the statute of the international tribunal.

14. Reference should also be made in this regard to the report of the committee of jurists presented by France, in which, although preference is expressed by the authors for the establishment of an ad hoc tribunal by a resolution of the

Security Council adopted under Chapter VII of the Charter of the United Nations, possible alternative solutions are also discussed (S/25266).

15. The role of the Security Council regarding the establishment and functioning of the tribunal should remain within the limits of the very considerable powers expressly entrusted to it by the Members of the United Nations in accordance with the Charter. The Government of Brazil is not convinced that the competence to establish and/or exercise a criminal jurisdiction is among the constitutional powers of the Security Council.

16. If the tribunal were to be established as a subsidiary organ of the Security Council or as an organ otherwise subordinated to the Council, its independence and impartiality could be questioned.

17. There is a need for a clear and unambiguous definition of the law to be applied by the tribunal, not least as regards the characterization of the crimes to be punished. The relevant international instruments in force in the territory of the former Socialist Federal Republic of Yugoslavia provide an important basis in this regard.

18. The work of the tribunal must be carried out with full respect for the human rights and fundamental freedoms of the defendants. International legal instruments in the field of human rights, especially the International Covenant on Civil and Political Rights, and generally accepted principles of criminal law must be fully respected.

19. This consideration is valid for all aspects of the work of the tribunal, including the assessment of penalties, one of the most sensitive questions related to the establishment of an ad hoc international criminal jurisdiction. In particular, it is essential that no form of cruel, inhuman or degrading punishment be included among the penalties to be imposed by the tribunal.

20. If the members of the Security Council do decide to create the tribunal by a resolution of the Council, consideration should be given to the adoption of measures that would ensure the participation and involvement in this process, through the General Assembly, of the whole membership of the United Nations. In particular, it should be provided that the members of the tribunal be elected by the General Assembly and the Security Council, in a procedure analogous to that applicable to the election of the members of the International Court of Justice, so as to ensure that the body as a whole is based on equitable geographical representation and adequately represents the principal legal systems of the world.

21. Consideration could also be given to other suggestions for involving the General Assembly in the process of establishing the tribunal, such as that contained in paragraph 44 of the document submitted by France (S/25266).

22. It is the hope of the Government of Brazil that an effective international tribunal will be established, on a solid legal basis, to prosecute and try the persons responsible for the heinous war crimes and crimes against humanity committed in the territory of the former Socialist Federal Republic of

Yugoslavia. Brazil stands ready to participate in deliberations to that end, on the basis of the report to be submitted to the Security Council by the Secretary-General.

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ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Letter dated 7 April 1993 from the President of the Security Council to the Secretary-General

I have the honour to request you to transmit to the General Assembly at its resumed forty-seventh session the following resolution (resolution 817 (1993)), adopted by the Security Council at its 3196th meeting, on 7 April 1993:

"The Security Council,

"Having examined the application for admission to the United Nations contained in document A/47/876-S/25147,

"Noting that the applicant fulfils the criteria for membership in the United Nations laid down in Article 4 of the Charter,

"Noting, however, that a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good neighbourly relations in the region,

"Welcoming the readiness of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, at the request of the Secretary-General, to use their good offices to settle the above-mentioned difference and to promote confidence-building measures among the parties,

"Taking note of the contents of the letters received from the parties, 1/

"1. Urges the parties to continue to cooperate with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in order to arrive at a speedy settlement of their difference;

"2. Recommends to the General Assembly that the State whose application is contained in document A/47/876-S/25147 be admitted to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State;

"3. Requests the Secretary-General to report to the Council on the outcome of the initiative taken by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia."

"1/ S/25541, S/25542 and S/25543.

I would point out that, when adopting the aforementioned resolution, the Security Council decided to have recourse to the provisions of the last paragraph of rule 60 of its provisional rules of procedure in order to submit its recommendation to the General Assembly at its resumed forty-seventh session.

In accordance with rule 60, paragraph 2 of the provisional rules of procedure of the Security Council, I also request you to transmit to the General Assembly at its resumed forty-seventh session, for its information, the verbatim records of the 3195th and 3196th meetings of the Council, at which the application was considered.

(Signed) Jamsheed K. A. MARKER
President of the Security Council